



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 15, 1998

Ms. Mary A. Boyd  
Executive Director  
The Advisory Commission on State  
Emergency Communications  
1101 Capital of Texas Highway South,  
Suite B-100  
Austin, Texas 78746-6437

OR98-0123

Dear Ms. Boyd:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 27750.

The Advisory Commission on State Emergency Communications (the "ASCEC") has received a request for "copies of the ASCEC Monthly Equalization Surcharge Remittance Reports for GTE Telephone and all other affiliates or subsidiaries controlled by GTE operating in Texas from January 1, 1994, to the present." In addition, the requestor seeks "a copy of the last three RFPs for audits and their respective completed reports requested and received by the ASCEC Commissioners."<sup>1</sup> You object to release of the requested monthly equalization surcharge remittance reports and claim that section 552.110 of the Government Code excepts them from required public disclosure.<sup>2</sup>

The information at issue here was generated in connection with GTE's responsibilities under subchapter D of chapter 771 of the Health and Safety Code. Section 771.072(c) charges the intrastate long-distance service provider, in this case GTE, with the duty of collecting the surcharges imposed under section 771.072 and delivering the surcharges to the commission. *Id.* § 771.072(c). The amounts of the surcharges are

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<sup>1</sup>The requestor also asked the Texas State Treasury (the "treasury") for substantially the same information. The treasury requested a ruling from this office and that request was assigned ID # 28792. As the treasury is no longer in existence, we only address the availability of the information from the ASCEC. We assume that the Texas State Comptroller now handles the type of information requested of the treasury.

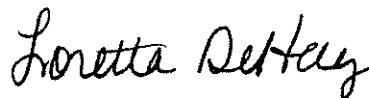
<sup>2</sup>As you do not comment on the other information requested, we assume that it has been made available to the requestor. *See* Open Records Decision No. 363 (1983).

established in sections 255.1 and 255.9 of title 1 of the Texas Administrative Code. The requested surcharge remittance reports reflect GTE's calculation of the charges under these sections. The reports reveal GTE's monthly long-distance revenue figures, the gross surcharge collected, the administrative fee deducted, the net surcharge collected, and the total amount remitted.

Although this office does not normally address exceptions to disclosure not argued by a governmental body, we will raise section 552.101 if the requested information is confidential by some other source of law. *See* Open Records Decision No. 455 (1987) at 3. We believe that the requested information is confidential by law under section 552.101 of the Government Code in conjunction with section 771.061(b) of the Health and Safety Code. The 75th Legislature amended subchapter C of chapter 771 of the Health and Safety Code to make confidential certain information provided to the ASCEC by a service provider of telecommunications service. Acts 1997, 75th Leg. ch. 1377, § 2. Specifically, section 771.061(b) provides that "[i]nformation that a service provider of telecommunications service furnishes to the advisory commission, a regional planning commission, or an emergency communication district to verify or audit emergency service fees or surcharge remittances and that includes access line or market share information of an individual service provider is confidential and not available for public inspection." *Id.* We believe that the requested information verifies surcharge remittances the release of which would reveal market share information of a telecommunications service provider. The information is, therefore, confidential pursuant to section 771.061(b) of the Health and Safety Code and must be withheld.<sup>3</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

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<sup>3</sup>As we conclude that you must withhold the requested information under section 771.061(b) of the Health and Safety Code, we do not address the applicability of section 552.110 of the Government Code.

Ref.: ID# 27750

Enclosures: Submitted documents

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